

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>Southern</u>
Name (under which you were convicted): <u>Tishawn C. Woods</u>		Docket or Case No.: <u>7:21-cr-00372-VB-1</u>
Place of Confinement: <u>F.C.I. Baybrook</u>		Prisoner No.: <u>38989-509</u>
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <u>v. TISHAWN C. WOODS</u>

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

U.S DISTRICT COURT
SOUTHERN DISTRICT OF NEW-YORK (WHITE PLAINS)

- (b) Criminal docket or case number (if you know): 7:21-cr-00372-VB-1

2. (a) Date of the judgment of conviction (if you know): December 22, 2022

- (b) Date of sentencing: December 21, 2022

3. Length of sentence: 240 Months

4. Nature of crime (all counts): 18:1951 conspiracy to commit Hobbs Act
Robberies. 18:924-C (I)(A)(iii) Discharging firearm in
furtherance of a crime of violence.
18: 924-C (N)(A) (ii) Brandishing firearm in furtherance
of a crime of violence. (please see back of page)

5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

plead guilty to counts 1, 7, 11
(section 4)

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

continuance of page 2.

Nature of crime. All original counts.

Count one

Hobbs Act conspiracy 18: U.S.C. 1951

Count two

Hobbs Act Robbery 18: U.S.C. 1951

Count three

Firearm offense 18: U.S.C. 924(c)(1)(A)(ii)

Count four

Hobbs Act Robbery 18: U.S.C. 1951 and 2,

Count five

Firearm offense 18: U.S.C. 924(c)(1)(A)(ii) and 2

Count 6

Hobbs Act Robbery 18: U.S.C. 1951 and 2

Count seven

Firearm offense 18: U.S.C. 924(c)(1)(A)(ii)

(iii) and 2.

Count eight

Hobbs Act Robbery 18: U.S.C. 1951 and 2

Count nine

Firearm offense 18: USC 924(c)(1)(A)(ii), (iii)

Count ten

Hobbs Act Robbery 18: USC 1951 (B)(1)

Count eleven

Firearm offense 18: U.S.C. 924(c)(1)(A)(ii)

(iii)

8. Did you appeal from the judgment of conviction?

Yes ☐No ☒

9. If you did appeal, answer the following:

(a) Name of court:

N/A

(b) Docket or case number (if you know):

N/A

(c) Result:

N/A

(d) Date of result (if you know):

N/A

(e) Citation to the case (if you know):

N/A

(f) Grounds raised:

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know):

N/A

(2) Result:

N/A

(3) Date of result (if you know):

N/A

(4) Citation to the case (if you know):

N/A

(5) Grounds raised:

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

N/A

(2) Docket or case number (if you know):

N/A

(3) Date of filing (if you know):

N/A

- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Ineffective Assistance of Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

counsel's performance fell below an objective standard of reasonableness when counsel failed to place the government's case to a true meaningful adversarial test. Petitioner make this first ground of Ineffective assistance of counsel on Attorney John S. Wallenstein whom represented him during pre-trial and time of plea of guilty. Petitioner is seeking a collateral review and submits corroborating affidavit and facts please see facts (please turn page over)

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

plead guilty

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

continuance of ground one

1. Counsel did not go over discovery with petitioner in its whole to prepare a adequate form of defense against the governments case. Statements made by co-defendants were never shown to petitioner to deliver a response whether the statements were false or true. Inconsistent with the evidence, or other statements, counsels deficient performance, really prejudiced petitioner. Because if counsel had been loyal to petitioner, going over all the discovery, there would've been exculpatory evidence warranting the suppression of illegally obtained evidence causing petitioner to wanna go to trial and not accept a plea. Also evidence that would've caused a jury to find the petitioner NOT Guilty on several counts.

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

pleaded guilty

GROUND TWO: denied effective assistance of counsel
when counsel didn't challenge count one duplicity

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

counsel was ineffective for failing to object
to or even challenge the duplicity of count one
the petitioner is charged with 2 offenses
in one count and was manipulated to plea
guilty to this when the law forbids this, plus
duplicity violates the petitioner's substantial
rights, counsel should've challenged this.
(Please turn Page)

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

continuance of ground two:

counsel's performance definitely prejudiced petitioner.

In count one, petitioner is victim of duplicity: 2 offenses in one count

1. Robbery of a Marijuana dealer and gas stations. In and around Newburgh.
2. The term gas STATIONS meaning more than one.

Legal Fact: duplicity occurs when a indictment charges 2 or more separate and distinct offenses in a single count.

The Substantiated rights of the petitioner is Prejudiced

Prejudice may occur in 3 ways.

1. Duplicious Indictments obscure the specific charges, thereby preventing a jury from separately deciding the case. Issue of innocence or guilt. This duplicity distorts the jury verdict decisions.

2. Duplicious Indictment may also violate petitioners Constitutional rights by hindering petitioners ability to argue double jeopardy.

3. Duplicious Indictments raise the risk

of prejudicial expletory hearings, even though petitioner plea guilty it was overwhelming ineffective assistance of counsel for counsel to not object or challenge the violation let alone allow petitioner to plea to it.

(2) If you did not raise this issue in your direct appeal, explain why:

I pleaded guilty

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: denied Right to effective counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

counsel never requested mental evaluation on petitioner. Despite knowing petitioner has history of mental illness and disrupted child hood Counsel acted as surrogate prosecutor by not having his client evaluated to determine if petitioner was mentally capable to understand the offenses and what he was pleading guilty to. Counsel was ineffective

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

pleaded guilty

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

N/A

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state: N/A
Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Pleaded guilty.

Ineffective assistance of counsel
GROUND FOUR: Counsel was ineffective for not challenging whether robbery of a illegal Marijuana drug dealer
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): constitute a conspiracy to commit hobbs act robbery let alone a federal offense.
please see back page

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Continuance of ground four:

Counsel never challenged the validity of these charges.

Hobbs act is Interference with Interstate Commerce.

Never does it say the robbery of a local Marijuana dealer. Constitutes a federal offense. There was no evidence of Petitioner Interfering with United States Commerce.

Counsel was ineffective in his performance which prejudiced his client, if Counsel had challenged this and submitted Motion to suppress also rule 29 for dismissal. Petitioner would've went to trial instead of pleading guilty to charges that is unconstitutional or other circuits have ruled is not federal violations.

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

pleaded guilty

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: NO

GROUND FIVE: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel was ineffective for allowing petitioner to plead guilty on firearm offense 924-C using Count one as the predicate offense to support Counts seven and eleven.

Conspiracy to commit Hobbs act robbery is not a crime of violence. Counsel was ineffective for not challenging this as well as having petitioner plead guilty. Counsel prejudiced

(b) Direct Appeal of Ground FIVE: petitioner by not challenging

(1) If you appealed from the judgment of conviction, did you raise this issue? numerous matters

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

pleaded guilty

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition:

N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

John S. Wallenstein 1100 Franklin Ave. suite 305 PS
 (b) At the arraignment and plea: Garden City NY 11530

(c) At the trial:

N/A

(d) At sentencing:

John S. Wallenstein

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion is timely file within the one year statute of limitations where the United States District Court, Southern District of New-York sentenced petitioner December 21, 2022.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Vacate the sentence and or the conviction and remand back to district court for evidentiary hearing to expand the record for purpose of revealing the Miscarriage of Justice
or any other relief to which movant may be entitled.
New sentencing hearing vacating the 924-C due to it being Unconstitutionally attached to what's been ruled as NOT crime of Violence.
Tishawn C. Woods.
Signature of Attorney (if any)

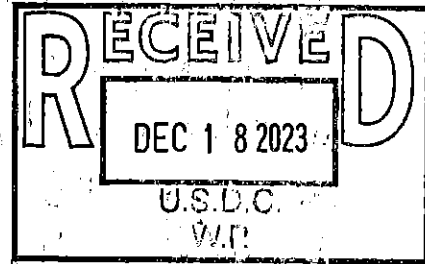
I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on December 12, 2023
(month, date, year)

Executed (signed) on December 12, 2023 (date)

Tishawn Woods
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Legal Affidavit



United States
of America

v.

Tishawn C. Woods

Case 7:21-cr-00372-VB-1

under the penalty of perjury U.S.C 1746
on this 6th day of december 2023
this affiant Tishawn C. Woods state
the following facts. Is true.

1. I'm currently at f.c.i Raybrook
Serving a sentence of 20 years.

2. prior to my plea agreement
my appointed counsel John S.
Wallenstein did NOT show me

Brady Material Discovery of
statements by co-defendants.

3. D.N.A and or forensic evidence.

4. Affidavits for warrants to determine
if false information was used to obtain

the warrants. Also

In order for me to see possible defense for preparation for trial. Instead he took advantage of my Mental Disability and lack of knowledge in the law, Manipulating me into taking a plea of guilty, for charges,

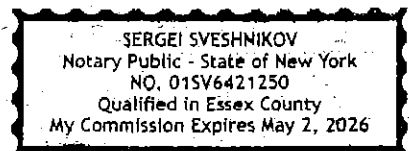
that U.S Supreme court and Circuit Courts has ruled is unconstitutional, rendering him ineffective. Quoting Strickland v. Washington 406 U.S 688 80 L Ed 2d 674, 104 S Ct 2052 (1984)

this affidavit should be in support of My (Tishawn C. Woods) Habeas Corpus 2255 petition to this honorable court, requesting relief, to vacate the 924-c conviction.

161 Tishawn wash

Tishawn C. Woods
F.C.I. Baybrook
P.O. Box 900
Baybrook N.Y 12799

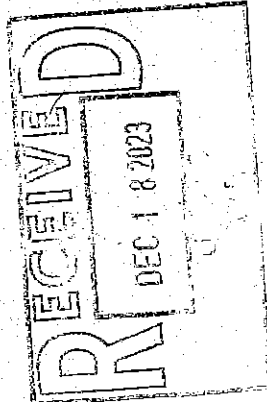
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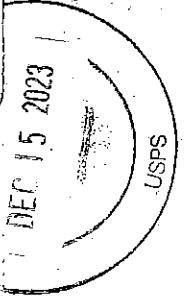
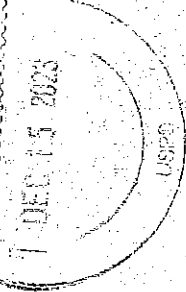
C.1 Raybrook

Box 900

Raybrook ny 12799



SEM
SDNY



Attn: court clerk

United States District
Court
Southern Division
300 Quarropas Street
White Plains, Ny 10601

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11/21/23

Wailed out 12-14-2023